
ENGROSSED SUBSTITUTE HOUSE BILL 2267

State of Washington

61st Legislature

2009 Regular Session

By House Ways & Means (originally sponsored by Representatives Conway, Haigh, Hunt, and Kenney)

READ FIRST TIME 03/03/09.

1 AN ACT Relating to protecting the collective bargaining rights of
2 certain exempt employees; amending RCW 41.06.070 and 41.06.133; and
3 declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 41.06.070 and 2009 c 5 s 1 are each amended to read as
6 follows:

7 (1) The provisions of this chapter do not apply to:

8 (a) The members of the legislature or to any employee of, or
9 position in, the legislative branch of the state government including
10 members, officers, and employees of the legislative council, joint
11 legislative audit and review committee, statute law committee, and any
12 interim committee of the legislature;

13 (b) The justices of the supreme court, judges of the court of
14 appeals, judges of the superior courts or of the inferior courts, or to
15 any employee of, or position in the judicial branch of state
16 government;

17 (c) Officers, academic personnel, and employees of technical
18 colleges;

19 (d) The officers of the Washington state patrol;

- 1 (e) Elective officers of the state;
- 2 (f) The chief executive officer of each agency;
- 3 (g) In the departments of employment security and social and health
4 services, the director and the director's confidential secretary; in
5 all other departments, the executive head of which is an individual
6 appointed by the governor, the director, his or her confidential
7 secretary, and his or her statutory assistant directors;
- 8 (h) In the case of a multimember board, commission, or committee,
9 whether the members thereof are elected, appointed by the governor or
10 other authority, serve ex officio, or are otherwise chosen:
- 11 (i) All members of such boards, commissions, or committees;
- 12 (ii) If the members of the board, commission, or committee serve on
13 a part-time basis and there is a statutory executive officer: The
14 secretary of the board, commission, or committee; the chief executive
15 officer of the board, commission, or committee; and the confidential
16 secretary of the chief executive officer of the board, commission, or
17 committee;
- 18 (iii) If the members of the board, commission, or committee serve
19 on a full-time basis: The chief executive officer or administrative
20 officer as designated by the board, commission, or committee; and a
21 confidential secretary to the chair of the board, commission, or
22 committee;
- 23 (iv) If all members of the board, commission, or committee serve ex
24 officio: The chief executive officer; and the confidential secretary
25 of such chief executive officer;
- 26 (i) The confidential secretaries and administrative assistants in
27 the immediate offices of the elective officers of the state;
- 28 (j) Assistant attorneys general;
- 29 (k) Commissioned and enlisted personnel in the military service of
30 the state;
- 31 (l) Inmate, student, part-time, or temporary employees, and part-
32 time professional consultants, as defined by the Washington personnel
33 resources board;
- 34 (m) The public printer or to any employees of or positions in the
35 state printing plant;
- 36 (n) Officers and employees of the Washington state fruit
37 commission;
- 38 (o) Officers and employees of the Washington apple commission;

1 (p) Officers and employees of the Washington state dairy products
2 commission;

3 (q) Officers and employees of the Washington tree fruit research
4 commission;

5 (r) Officers and employees of the Washington state beef commission;

6 (s) Officers and employees of any commission formed under chapter
7 15.66 RCW;

8 (t) Officers and employees of agricultural commissions formed under
9 chapter 15.65 RCW;

10 (u) Officers and employees of the nonprofit corporation formed
11 under chapter 67.40 RCW;

12 (v) Executive assistants for personnel administration and labor
13 relations in all state agencies employing such executive assistants
14 including but not limited to all departments, offices, commissions,
15 committees, boards, or other bodies subject to the provisions of this
16 chapter and this subsection shall prevail over any provision of law
17 inconsistent herewith unless specific exception is made in such law;

18 (w) In each agency with fifty or more employees: Deputy agency
19 heads, assistant directors or division directors, and not more than
20 three principal policy assistants who report directly to the agency
21 head or deputy agency heads;

22 (x) All employees of the marine employees' commission;

23 (y) Staff employed by the department of community, trade, and
24 economic development to administer energy policy functions and manage
25 energy site evaluation council activities under RCW 43.21F.045(2)(m);

26 (z) Staff employed by Washington State University to administer
27 energy education, applied research, and technology transfer programs
28 under RCW 43.21F.045 as provided in RCW 28B.30.900(5).

29 (2) The following classifications, positions, and employees of
30 institutions of higher education and related boards are hereby exempted
31 from coverage of this chapter:

32 (a) Members of the governing board of each institution of higher
33 education and related boards, all presidents, vice presidents, and
34 their confidential secretaries, administrative, and personal
35 assistants; deans, directors, and chairs; academic personnel; and
36 executive heads of major administrative or academic divisions employed
37 by institutions of higher education; principal assistants to executive
38 heads of major administrative or academic divisions; other managerial

1 or professional employees in an institution or related board having
2 substantial responsibility for directing or controlling program
3 operations and accountable for allocation of resources and program
4 results, or for the formulation of institutional policy, or for
5 carrying out personnel administration or labor relations functions,
6 legislative relations, public information, development, senior computer
7 systems and network programming, or internal audits and investigations;
8 and any employee of a community college district whose place of work is
9 one which is physically located outside the state of Washington and who
10 is employed pursuant to RCW 28B.50.092 and assigned to an educational
11 program operating outside of the state of Washington;

12 (b) The governing board of each institution, and related boards,
13 may also exempt from this chapter classifications involving research
14 activities, counseling of students, extension or continuing education
15 activities, graphic arts or publications activities requiring
16 prescribed academic preparation or special training as determined by
17 the board: PROVIDED, That no nonacademic employee engaged in office,
18 clerical, maintenance, or food and trade services may be exempted by
19 the board under this provision;

20 (c) Printing craft employees in the department of printing at the
21 University of Washington.

22 (3) In addition to the exemptions specifically provided by this
23 chapter, the director of personnel may provide for further exemptions
24 pursuant to the following procedures. The governor or other
25 appropriate elected official may submit requests for exemption to the
26 director of personnel stating the reasons for requesting such
27 exemptions. The director of personnel shall hold a public hearing,
28 after proper notice, on requests submitted pursuant to this subsection.
29 If the director determines that the position for which exemption is
30 requested is one involving substantial responsibility for the
31 formulation of basic agency or executive policy or one involving
32 directing and controlling program operations of an agency or a major
33 administrative division thereof, the director of personnel shall grant
34 the request and such determination shall be final as to any decision
35 made before July 1, 1993. The total number of additional exemptions
36 permitted under this subsection shall not exceed one percent of the
37 number of employees in the classified service not including employees
38 of institutions of higher education and related boards for those

1 agencies not directly under the authority of any elected public
2 official other than the governor, and shall not exceed a total of
3 twenty-five for all agencies under the authority of elected public
4 officials other than the governor.

5 The salary and fringe benefits of all positions presently or
6 hereafter exempted except for the chief executive officer of each
7 agency, full-time members of boards and commissions, administrative
8 assistants and confidential secretaries in the immediate office of an
9 elected state official, and the personnel listed in subsections (1)(j)
10 through (u) and (x) and (2) of this section, shall be determined by the
11 director of personnel. Changes to the classification plan affecting
12 exempt salaries must meet the same provisions for classified salary
13 increases resulting from adjustments to the classification plan as
14 outlined in RCW 41.06.152.

15 For the twelve months following February 18, 2009, a salary or wage
16 increase shall not be granted to any position exempt from
17 classification under this chapter, except that a salary or wage
18 increase may be granted to employees pursuant to collective bargaining
19 agreements negotiated under chapter 28B.52, 41.56, 47.64, or 41.76 RCW,
20 or negotiated by the nonprofit public corporation formed under chapter
21 67.40 RCW.

22 Any person holding a classified position subject to the provisions
23 of this chapter shall, when and if such position is subsequently
24 exempted from the application of this chapter, be afforded the
25 following rights: If such person previously held permanent status in
26 another classified position, such person shall have a right of
27 reversion to the highest class of position previously held, or to a
28 position of similar nature and salary.

29 Any classified employee having civil service status in a classified
30 position who accepts an appointment in an exempt position shall have
31 the right of reversion to the highest class of position previously
32 held, or to a position of similar nature and salary.

33 A person occupying an exempt position who is terminated from the
34 position for gross misconduct or malfeasance does not have the right of
35 reversion to a classified position as provided for in this section.

36 **Sec. 2.** RCW 41.06.133 and 2009 c 5 s 2 are each amended to read as
37 follows:

1 The director shall adopt rules, consistent with the purposes and
2 provisions of this chapter and with the best standards of personnel
3 administration, regarding the basis and procedures to be followed for:

4 (1) The reduction, dismissal, suspension, or demotion of an
5 employee;

6 (2) Training and career development;

7 (3) Probationary periods of six to twelve months and rejections of
8 probationary employees, depending on the job requirements of the class,
9 except that entry level state park rangers shall serve a probationary
10 period of twelve months;

11 (4) Transfers;

12 (5) Promotional preferences;

13 (6) Sick leaves and vacations;

14 (7) Hours of work;

15 (8) Layoffs when necessary and subsequent reemployment, except for
16 the financial basis for layoffs;

17 (9) The number of names to be certified for vacancies;

18 (10) Adoption and revision of a state salary schedule to reflect
19 the prevailing rates in Washington state private industries and other
20 governmental units. The rates in the salary schedules or plans shall
21 be increased if necessary to attain comparable worth under an
22 implementation plan under RCW 41.06.155 and, for institutions of higher
23 education and related boards, shall be competitive for positions of a
24 similar nature in the state or the locality in which an institution of
25 higher education or related board is located. Such adoption and
26 revision is subject to approval by the director of financial management
27 in accordance with chapter 43.88 RCW;

28 (11) Increment increases within the series of steps for each pay
29 grade based on length of service for all employees whose standards of
30 performance are such as to permit them to retain job status in the
31 classified service. For the twelve months following February 18, 2009,
32 a salary or wage increase shall not be granted to any exempt position
33 under this chapter, except that a salary or wage increase may be
34 granted to employees pursuant to collective bargaining agreements
35 negotiated under chapter 28B.52, 41.56, 47.64, or 41.76 RCW, or
36 negotiated by the nonprofit public corporation formed under chapter
37 67.40 RCW;

1 (12) Optional lump sum relocation compensation approved by the
2 agency director, whenever it is reasonably necessary that a person make
3 a domiciliary move in accepting a transfer or other employment with the
4 state. An agency must provide lump sum compensation within existing
5 resources. If the person receiving the relocation payment terminates
6 or causes termination with the state, for reasons other than layoff,
7 disability separation, or other good cause as determined by an agency
8 director, within one year of the date of the employment, the state is
9 entitled to reimbursement of the lump sum compensation from the person;

10 (13) Providing for veteran's preference as required by existing
11 statutes, with recognition of preference in regard to layoffs and
12 subsequent reemployment for veterans and their surviving spouses by
13 giving such eligible veterans and their surviving spouses additional
14 credit in computing their seniority by adding to their unbroken state
15 service, as defined by the director, the veteran's service in the
16 military not to exceed five years. For the purposes of this section,
17 "veteran" means any person who has one or more years of active military
18 service in any branch of the armed forces of the United States or who
19 has less than one year's service and is discharged with a disability
20 incurred in the line of duty or is discharged at the convenience of the
21 government and who, upon termination of such service, has received an
22 honorable discharge, a discharge for physical reasons with an honorable
23 record, or a release from active military service with evidence of
24 service other than that for which an undesirable, bad conduct, or
25 dishonorable discharge shall be given. However, the surviving spouse
26 of a veteran is entitled to the benefits of this section regardless of
27 the veteran's length of active military service. For the purposes of
28 this section, "veteran" does not include any person who has voluntarily
29 retired with twenty or more years of active military service and whose
30 military retirement pay is in excess of five hundred dollars per month.

31 Rules adopted under this section by the director shall provide for
32 local administration and management by the institutions of higher
33 education and related boards, subject to periodic audit and review by
34 the director.

35 Rules adopted by the director under this section may be superseded
36 by the provisions of a collective bargaining agreement negotiated under
37 RCW 41.80.001 and 41.80.010 through 41.80.130. The supersession of

1 such rules shall only affect employees in the respective collective
2 bargaining units.

3 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
4 preservation of the public peace, health, or safety, or support of the
5 state government and its existing public institutions, and takes effect
6 immediately.

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